IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

R.C. Rev..No. 430 of 2006(I)

RCA.8/2004 of DISTRICT COURT, KALPETTA
RCP.5/2001 of MUNSIFF MAGISTRATE COURT,MANANTHAVADY
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REVN. PETITIONER/RESPONDENT/RESPONDENT

M.K.ASSU, S/O. KUNHIKALANTHAN,
MUYYARIKANDI HOUSE, PANAMARAM POST AND VILLAGE,
MANANTHAVADY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS: APPELLANT/PETITIONER

P.A.SOUDHA, D/O. ABDUL AZEEZ,
KANIYAMBETTA VILLAGE, VYTHIRI TALUK,
WAYANAD DISTRICT.

BY /

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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R.C.R.No. 430 of 2006

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DATED THIS THE 9th day of January 2007

ORDER

Udayabhanu,J.

The revision petitioner is the tenant under orders of eviction as per the order of the appellate authority that reversed the finding of the Rent Control Court with respect to the prayer under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act. The case of the landlady is that the premises are required for conducting a business by the husband of the petitioner, who is employed in the Middle East. The husband of the petitioner wanted to return home and start an enterprise to earn his livelihood. The husband of the petitioner is a B.Sc.Engineering graduate and he is employed in the Gulf countries for more than 14 years. He came back to his native place intending to start the business in electrical and mechanical goods. But the respondent/tenant did not vacate the

premises. Hence he was forced to go back. The Rent Control Court dismissed the application on the ground that the petitioner's parents are having other rooms and hence she could have obtained the required accommodation from her parents. The appellate authority reversed the finding especially as the landlady is not having any title over the property said to have been owned by her parents. There was no specific finding by the Rent Control Court that the need set up is as such false. Pw1, the petitioner had deposed with respect to the bona fide need and as to the qualifications of her husband and also regarding his experience in the field of business.

2. The point stressed by the counsel for the revision petitioner is that the husband of the petitioner was not examined. In the circumstances and considering the fact that at the time he was working in Saudi Arabia, his failure to depose cannot be based as such to non-suit the landlady. It has been specifically pleaded that the husband is depending on the petitioner. There is no dispute as to the capacity of the petitioner to invest in the business. It was also found that the petitioner/landlady is not in possession of any other premises.

Hence, we find that the situation contemplated under Section 11 (3) of the Kerala Buildings (Lease & Rent Control) Act is in existence. Nothing was found to disbelieve the version of PW1.

3. The entitlement of the protection of Section 11(3) of the Act was not considered by the Rent Control Court. But the appellate authority has considered the same. It was found that the revision petitioner has not produced any objective evidence to establish that he is solely depending for his livelihood on the income derived from the business conducted in the petition schedule premises. On the other hand, PW1 has deposed that the tenant is well off and one of his sons is working in the Middle East and is having 10 acres of property and some of his sons are conducting business in hardwares. It was also found that the vacant premises are available in the locality. The appellate authority has recorded on the statement of RW1, the revision petitioner/tenant that even if other buildings are available, he will have to pay a sum of Rs.two lakhs as deposit and a huge amount as monthly rent. It appears that he has not made any serious enquiries in this regard. In the circumstances, we find no reason to interfere in the findings of the appellate authority allowing the

prayer of the petitioner/landlady for eviction.

Counsel for the revision petitioner has sought for time of one year to vacate the premises. It is pointed out that he is conducting the business in the petition schedule premises for the last 30 years and that he wanted time to shift the business. The same is opposed by the counsel for the respondent/landlady. We find that the proceedings were initiated in 2001. In the circumstances, the revision petitioner/tenant is granted four months time from today onwards to vacate the premises on condition that he shall remit the rental arrears, if any, and continue to deposit the rent due in future and file an affidavit before the execution court to the above effect and undertaking that he shall vacate the premises on or before 9-5-2007. The affidavit is to be filed within 20 days. The Rent control revision is disposed of accordingly.

K.A.ABDUL GAFOOR
JUDGE

K.R.UDAYABHANU,
JUDGE

ks.